

### **REMARKS**

By the foregoing Amendment, Claims 1 and 23 are amended. Entry of the Amendment, and favorable consideration thereof is earnestly requested.

In the Advisory Action mailed July 6, 2004, the Examiner maintained the previous rejection of all claims under 35 U.S.C. §103 as being unpatentable primarily over Iacovelli (U.S. Patent No. 5, 350,391) in view of Gain (U.S. Patent No. 3,840,015). Applicant respectfully requests that the Examiner reconsider this rejection in view of the above Amendments and the below Remarks.

The present invention is directed to an endoscopic instrument having a fluorescent marking on a distal end thereof, which fluorescent marking has a fluorescent excitation range which lies within a fluorescent excitation range of surrounding tissue (whether autofluorescent or fluorescent by way of a photosensitizer). The present invention also includes a light source having a wavelength selected so as to excite both the fluorescent marking and the fluorescent surrounding tissue. This allows for both the fluorescent marking and the fluorescent surrounding tissue to be caused to fluoresce with a single light source.

In the Advisory Action, the Examiner found Applicant's previous arguments unpersuasive, stating that "The claim language does not disclose any limitation

regarding the surrounding tissues.” Applicant has amended all claims to require that the fluorescing substance be selected in such a way that its excitation range lies in an excitation range of the fluorescence (whether auto-fluorescence or fluorescence caused by a photosensitizer) of tissue surrounding the endoscopic instrument, and that the light source be selected in a way that it only emits light of specific wavelength ranges matching excitation ranges of both the fluorescent marking of the instrument and the fluorescence of the tissue surrounding the endoscopic instrument. Applicant respectfully submits that this is clearly not disclosed, taught, or suggested by (and is actually taught against by) the cited prior art.

For the foregoing reasons, Applicants respectfully submit that all pending claims, namely Claims 1-44, are patentable over the references of record, and earnestly solicit allowance of the same.

Respectfully submitted,



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